AO 106 (Rev. 04/10) Application for a Search Warrant

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

OCT 03 2016

MATTHEW J. DYKMAN
CLERK

UNITED STATES DISTRICT COURT

for the

District of New Mexico

In the Matter of the Search of
(Briefly describe the property to be searched or identify the person by name and address)

Unnecto Cellular Telephone, black in color, with FCC ID 2ADR3U513, secured at the FBI Office located at 4200 Luecking Park Avenue NW, Albuquerque, NM

Case No. 16-MR-720

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:
Unnecto Cellular Telephone, black in color, with FCC ID 2ADR3U513, secured at the FBI Office located at 4200 Luecking Park Avenue NW, Albuquerque, NM

located in the County of San Juan District of New Mexico, there is now concealed *(identify the person or describe the property to be seized)*:
All electronically stored information, data and records, to include digital photographs, video, audio, telephone calls, voicemail communications, text messages, email, contacts, memos, notes, documents, files, maps, GPS data, calendars, appointments, internet activity, and evidence of user attribution showing who used or owned the device.

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☑ evidence of a crime;
- ☑ contraband, fruits of crime, or other items illegally possessed;
- ☑ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	*Offense Description*
Title 18 U.S.C. 1153	Crime occurring within Indian Country
Title 18 U.S.C. 1111	First Degree Felony Murder
Title 18 U.S.C. 1201(a)(2)	Kidnapping a Minor Resulting in Death

The application is based on these facts:

See attached Affidavit.

- ☑ Continued on the attached sheet.
- ☐ Delayed notice of _____ days (give exact ending date if more than 30 days: __________) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

[signature]
Applicant's signature

Jeffrey T. Wright, Special Agent (FBI)
Printed name and title

Sworn to before me and signed in my presence.

Date: 10-3-2016

[signature]
Judge's signature

City and state: Farmington, New Mexico

B. Paul Briones, US Magistrate Judge
Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

IN THE MATTER OF THE SEARCH OF A UNNECTO CELLULAR TELEPHONE, BLACK IN COLOR, WITH FCC ID 2ADR3U513, SECURED AT THE FBI OFFICE, 4200 LUECKING PARK AVE NW, ALBUQUERQUE, NM 87107	Case No. 16-MR-720

AFFIDAVIT IN SUPPORT OF AN APPLICATION UNDER RULE 41 FOR A WARRANT TO SEARCH AND SEIZE

I, JEFFREY T. WRIGHT, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. Your Affiant makes this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a search warrant authorizing the examination of property— an electronic device further described in Attachment A—which is currently in law enforcement possession, and the extraction of electronically stored information from that property as described in Attachment B.

2. Your Affiant is a Special Agent with the Federal Bureau of Investigation (FBI) and has been employed in that capacity since August 2008. Your Affiant is currently assigned to the Albuquerque Division of the FBI, Farmington Resident Agency, and has primary investigative responsibility in crimes that occur in Indian Country within the District of New Mexico, including violent crimes such as homicide, kidnapping, robbery, aggravated assault, and sexual assault. He is also responsible for investigating all other federal crimes for which the FBI investigates in the San Juan County area of New Mexico. The information set forth in this

affidavit has been derived from an investigation conducted by your Affiant, Shiprock Criminal Investigator (CI) Jefferson Joe (Navajo Department of Criminal Investigations), and/or communicated to your Affiant by other law enforcement officers and witnesses.

3. The applied-for warrant would authorize the forensic examination of the following cellular telephone/device for the purpose of identifying electronically stored data, particularly described in Attachment B.

IDENTIFICATION OF THE DEVICE TO BE EXAMINED

4. Black Unnecto Cellular Telephone with FCC ID 2ADR3U513 (also referred to herein as the Device).

5. The above-referenced device is currently located and secured in the Evidence Control Room at the FBI Albuquerque Division Office, 4200 Luecking Park Avenue NW, Albuquerque, NM 87107.

6. This affidavit is intended to show only that there is sufficient probable cause for the requested warrant and does not set forth all of your Affiant's knowledge about this matter.

PROBABLE CAUSE

7. Your Affiant is currently conducting an ongoing criminal investigation into the kidnapping, sexual assault, and murder of a Native American female minor (hereinafter referenced as Jane Doe), as well as the kidnapping of her younger brother (hereinafter referenced as John Doe), within the exterior boundaries of the Navajo Nation Indian Reservation. Said crime is being investigated as a violation of Title 18 United States Code (USC) Sections 1153

(Crimes Occurring in Indian Country) and 1111 (First Degree Felony Murder), Title 18 USC Sections 1201(a)(2) and 1201(g) (Kidnapping a Minor Resulting in Death), and Title 18 USC Sections 2241(c), 2246(2)(C), and 2245 (Aggravated Sexual Abuse Resulting in Death).

8. On the evening of May 2, 2016, investigators spoke with John Doe about the events surrounding the kidnapping of him and his sister. John Doe explained that earlier that afternoon, he and Jane Doe got off the school bus at the stop near their home in Lower Fruitland, New Mexico, located on the exterior boundaries of the Navajo Nation Indian Reservation. As they played with other children near the bus stop and adjacent to an irrigation canal, a maroon van driven by a lone Navajo male pulled up and asked them if they needed a ride. After John Doe and Jane Doe got into the van, the vehicle drove away from the area toward the Shiprock Pinnacle, eventually driving on to a remote dirt road.

9. The driver of the vehicle subsequently stopped his van in an open desert area. He then took Jane Doe out of the van and walked with her over a small hill. John Doe advised the driver took a curved piece of metal with him when they left and furthermore instructed John Doe to remain in the vehicle. Approximately one hour later, the driver returned without Jane Doe. John Doe observed the driver placing the curved piece of metal back in the van. The driver soon thereafter told John Doe to get out of the vehicle after which he drove away.

10. John Doe unsuccessfully attempted to locate his missing sister in the desert, after which he walked back to the dirt road and eventually reached Navajo Route 13. A passing motorist noticed John Doe walking by himself and stopped to pick him up. John Doe was subsequently taken to the police department.

11. On May 3, 2016, John Doe positively identified the driver of the maroon van as TOM BEGAYE, JR (hereinafter referenced as BEGAYE), Year of Birth 1988. He also identified BEGAYE's 2004 maroon Dodge Caravan as the van in which he and Jane Doe were picked up in and driven toward Shiprock Pinnacle.

12. BEGAYE was subsequently arrested and interviewed by your Affiant and CI Joe. BEGAYE told investigators he saw Jane Doe and John Doe playing by the canal and offered them a ride. He stated he picked up Jane Doe with the intention of having sexual intercourse with her. He drove away from the area with the two children, eventually heading west on Navajo Route 13 where he turned off the highway onto a dirt road. When he stopped near a small hill, Jane Doe was crying and begged to be taken home.

13. BEGAYE stated he grabbed an L-shaped tire iron from his van and hid it under his jacket. He then walked with Jane Doe over a hill where he took off her pants, underpants, and shoes. BEGAYE stated he then penetrated Jane Doe's vagina with two fingers, after which he hit her in the head really hard with the tire iron. Jane Doe immediately fell to the ground and BEGAYE hit her in the head again with the tire iron. After walking back to his van, he told John Doe to get out, after which he drove away.

14. Investigators located Jane Doe's body on May 3, 2016, south of Navajo Route 13 in an area west of an unimproved dirt road and near a small hill, within the exterior boundaries of the Navajo Nation Indian Reservation, which is Indian Country in the District of New Mexico. Jane Doe's head was bloody and appeared to have sustained blunt force trauma.

15. On the afternoon of May 3, 2016, the FBI Albuquerque Evidence Response Team (ERT) conducted a crime scene search of the open area where Jane Doe's body was located. Her clothing items and personal possessions, including her school backpack, were also found scattered near her body and subsequently collected after being photographed in place. ERT members furthermore located a black cellular telephone in the dirt near Jane Doe's backpack. The Unnecto cell phone, with FCC ID 2ADR3U513, was also photographed and collected as evidence.

16. On August 2, 2016, your Affiant spoke with Jane Doe's father, G.M., regarding the Unnecto cell phone. G.M. stated Jane Doe did not have a cell phone. He also did not know anything about a Unnecto cell phone nor to whom one may have belonged.

17. During the aforementioned interview of BEGAYE on May 3, 2016, BEGAYE told your Affiant he could not provide investigators with a contact number and claimed he did not have a telephone.

18. On the afternoon of May 3, 2016, investigators contacted and interviewed R.D., an associate of BEGAYE and the property owner of the sweat lodge at which BEGAYE was arrested. R.D. told investigators he learned about the disappearance of Jane Doe on the evening of May 2, 2016, during which time he was also told about the involvement of a red van. R.D. subsequently tried calling BEGAYE's cell phone multiple times but BEGAYE never answered. R.D.'s wife also attempted to text BEGAYE but she never received a reply.

19. On the afternoon of May 3, 2016, investigators interviewed L.K., an associate of BEGAYE who was also present at the sweat lodge at the time BEGAYE was arrested. L.K.

showed investigators the call log on his cell phone which reflected his last telephone conversation with BEGAYE on the afternoon of May 2, 2016, at approximately 4:19 p.m. BEGAYE's contact number was categorized as a "mobile" telephone in L.K.'s contacts and listed under the name "SUNSHINE". "SUNSHINE" is a known alias/nickname of BEGAYE.

20. In light of the above, your Affiant has probable cause to believe that BEGAYE possessed a cell phone as of 4:19 p.m. on the afternoon of May 2, 2016, immediately prior to the above-described kidnapping of Jane Doe and John Doe. His cell phone subsequently went unanswered when called later that evening by R.D. The following day, BEGAYE told investigators he did not have a phone.

21. Based on training and experience, your Affiant knows that cellular phones provide communication access including, but not limited to, telephonic communication, text messages, and access to Facebook and other internet and social media websites. Certain cellular phones may also provide GPS data of the location of the cellular phone and may store photographs or videos that may help to identify individuals.

22. Your Affiant has probable cause to believe the electronically stored information on the aforementioned black Unnecto cell phone with FCC ID 2ADR3U513 is relevant to this ongoing criminal investigation and will further serve to locate or develop material information related to the kidnapping, sexual assault, and murder of Jane Doe as well as the kidnapping of John Doe. Devices like the one seized from the desert crime scene are known to hold the electronically stored information being sought in Attachment B, and that said information is recorded on the device described in Attachment A.

23. Your Affiant is seeking this warrant out of an abundance of caution to be certain that an examination of the Unnecto cellular telephone described herein will comply with the Fourth Amendment and other applicable laws.

24. Based on training and experience, your Affiant knows the Unnecto cell phone described herein has been stored in a manner in which its contents, to the extent material to this investigation, are in substantially the same state as they were when the device first came into the possession of the FBI. The device is currently stored in the Evidence Control Room at the FBI Albuquerque Division Office, located at 4200 Luecking Park Avenue NW, Albuquerque, New Mexico 87107.

TECHNICAL TERMS

25. Based on my training and experience, your Affiant uses the following technical terms to convey the following meanings:

a. Wireless telephone: A wireless telephone (or mobile telephone, or cellular telephone) is a handheld wireless device used for voice and data communication through radio signals. These telephones send signals through networks of transmitter/receivers, enabling communication with other wireless telephones or traditional "land line" telephones. A wireless telephone usually contains a "call log," which records the telephone number, date, and time of calls made to and from the phone. In addition to enabling voice communications, wireless telephones offer a broad range of capabilities. These capabilities include: storing names and phone numbers in electronic "address books;" sending, receiving, and storing text messages and e-mail; taking, sending, receiving, and storing still photographs and moving video; storing and playing back audio files; storing dates, appointments, and other information on personal calendars; and accessing and downloading information from the Internet. Wireless telephones may also include global positioning system ("GPS") technology for determining the location of the device.

b. Digital camera: A digital camera is a camera that records pictures as digital picture files, rather than by using photographic film. Digital cameras use a variety of fixed and removable storage media to store their recorded images. Images can usually be retrieved by connecting the camera to a computer or by connecting the removable storage medium to a separate reader. Removable storage media include various types of flash memory cards or miniature hard drives. Most digital cameras also include a screen for viewing the stored images. This storage media can contain any digital data, including data unrelated to photographs or videos.

c. GPS: A GPS navigation device uses the Global Positioning System to display its current location. It often contains records the locations where it has been. Some GPS navigation devices can give a user driving or walking directions to another location. These devices can contain records of the addresses or locations involved in such navigation. The Global Positioning System (generally abbreviated "GPS") consists of 24 NAVSTAR satellites orbiting the Earth. Each satellite contains an extremely accurate clock. Each satellite repeatedly transmits by radio a mathematical representation of the current time, combined with a special sequence of numbers. These signals are sent by radio, using specifications that are publicly available. A GPS antenna on Earth can receive those signals. When a GPS antenna receives signals from at least four satellites, a computer connected to that antenna can mathematically calculate the antenna's latitude, longitude, and sometimes altitude with a high level of precision.

d. PDA: A personal digital assistant, or PDA, is a handheld electronic device used for storing data (such as names, addresses, appointments or notes) and utilizing computer programs. Some PDAs also function as wireless communication devices and are used to access the Internet and send and receive e-mail. PDAs usually include a memory card or other removable storage media for storing data and a keyboard and/or touch screen for entering data. Removable storage media include various types of flash memory cards or miniature hard drives. This removable storage media can store any digital data. Most PDAs run computer software, giving them many of the same capabilities as personal computers. For example, PDA users can work with word-processing documents, spreadsheets, and presentations. PDAs may also include global positioning system ("GPS") technology for determining the location of the device.

e. Internet: The Internet is a global network of computers and other electronic devices that communicate with each other. Due to the structure of the Internet, connections between devices on the Internet often cross state and international borders, even when the devices communicating with each other are in the same state.

26. Based on training, experience, and research, your Affiant knows that the Unnecto cell phone described herein has the capabilities that allow the device to serve as a wireless telephone and may furthermore provide capabilities to serve as a digital camera, portable media player, GPS navigation device and PDA. In my training and experience, examining data stored on these devices can uncover, among other things, evidence that reveals or suggests who possessed, owned or used the device(s).

ELECTRONIC STORAGE AND FORENSIC ANALYSIS

27. Based on my knowledge, training, and experience, your Affiant knows that electronic devices can store information for long periods of time. Similarly, things that have been viewed via the Internet are typically stored for some period of time on the device. This information can sometimes be recovered with forensics tools.

28. *Forensic evidence.* As further described in Attachment B, this application seeks permission to locate not only electronically stored information that might serve as direct evidence of the crimes described on the warrant, but also forensic evidence that establishes how each Device was used, the purpose of its use, who used it, and when. There is probable cause to believe that this forensic electronic evidence might be on the Device because:

a. Data on the storage medium can provide evidence of a file that was once on the storage medium but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file).

b. Forensic evidence on a device can also indicate who has used or controlled the device. This "user attribution" evidence is analogous to the search for "indicia of occupancy" while executing a search warrant at a residence.

c. A person with appropriate familiarity with how an electronic device works may, after examining this forensic evidence in its proper context, be able to draw conclusions about how electronic devices were used, the purpose of their use, who used them, and when.

d. The process of identifying the exact electronically stored information on a storage medium that are necessary to draw an accurate conclusion is a dynamic process. Electronic evidence is not always data that can be merely reviewed by a review team and passed along to investigators. Whether data stored on a computer is evidence may depend on other information stored on the computer and the application of knowledge about how a computer behaves. Therefore, contextual information necessary to understand other evidence also falls within the scope of the warrant.

e. Further, in finding evidence of how a device was used, the purpose of its use, who used it, and when, sometimes it is necessary to establish that a particular thing is not present on a storage medium.

29. *Nature of examination.* Based on the foregoing, and consistent with Rule 41(e)(2)(B), the warrant your Affiant is applying for would permit the examination of the Device consistent with the warrant. The examination may require authorities to employ techniques,

including but not limited to computer-assisted scans of the entire medium, that might expose many parts of the device to human inspection in order to determine whether it is evidence described by the warrant.

30. *Manner of execution.* Because this warrant seeks only permission to examine a device already in law enforcement's possession, the execution of this warrant does not involve the physical intrusion onto a premise. Consequently, your Affiant submits there is reasonable cause for the Court to authorize execution of the warrant at any time in the day or night.

CONCLUSION

31. Your Affiant submits that this affidavit supports probable cause for a search warrant authorizing the examination of the Device described herein and in Attachment A to seek the items described in Attachment B.

Jeffrey T. Wright
Special Agent
Federal Bureau of Investigation

Subscribed and sworn before me on this 3rd day of October 2016.

B. Paul Briones
United States Magistrate Judge

ATTACHMENT A

a. Unnecto Cellular Telephone, black in color, with FCC ID 2ADR3U513 (also referenced herein as the Device).

ATTACHMENT B

1. All electronically stored information, data and records on the Device described in Attachment A that relate to violations of Title 18 United States Code (USC) §§ 1153 (Crimes Occurring in Indian Country) and 1111 (First Degree Felony Murder), Title 18 USC §§ 1201(a)(2) and 1201(g) (Kidnapping a Minor Resulting in Death), and Title 18 USC §§ 2241(c), 2246(2)(C), and 2245 (Aggravated Sexual Abuse Resulting in Death), and involve **TOM BEGAYE, JR**, who was involved in the death of Jane Doe on May 2, 2016; including, but not limited to:

   a. Incoming/Outgoing telephone calls, Voicemail communications, Incoming/Outgoing text messages, Incoming/Outgoing email communications, contacts, digital photographs, video, audio, memos, notes, documents, files, maps, GPS data and locations, calendars, appointments, internet activity, etc.

2. Evidence of user attribution showing who used or owned the devices at the time the things described in this warrant were created, edited, or deleted, such as logs, phonebooks, saved usernames and passwords, documents, and browsing history;

3. As used above, the terms "records" and "information" include all of the foregoing items of evidence in whatever form and by whatever means they may have been created or stored, including any form of computer or electronic storage (such as flash memory or other media that can store data) and any photographic form.